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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

16 The United States of America, by and through DANIEL G. BOGDEN,
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18 United States Attorney, and ELIZABETH O. WHITE, Appellate Chief and
19 Assistant United States Attorney, respectfully requests that this Court enter
20 an order waiving the attorney-client privilege in 2:11-cr-327-PMP-CWH with
21 regard to Krystallin D. Hernandez, Esq. and Paulo M. Armeni, Esq.

This order is sought for the following reasons:

²⁴ 1. Defendant BO ARDEN ELLISON has filed a motion pursuant

to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in
1 federal custody in the above-captioned case. *See* CR 138. The Court ordered the
2 government to respond to Defendant's motion, and that response is currently
3 due on February 17, 2014. CR 139.
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5 2. Defendant's motion raises allegations, *inter alia*, that his first
6 attorney, Ms. Hernandez, provided ineffective assistance by a) failing to
7 communicate with him; b) failing to review discovery or investigate his case;
8 and c) incorrectly advising him with respect to the charges against him and to
9 the government's plea offer. He further alleges that his second attorney, Ms.
10 Armeni, provided ineffective assistance by failing to object to "factual errors" in
11 the PSR.
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14 3. Access to information from Defendant's former counsel,
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16 Krystallin D. Hernandez, Esq. and Paulo M. Armeni, Esq., is necessary to
17 appropriately respond to the allegations contained within Defendant's § 2255
18 motion.

13 4. The government requests this Court to issue an order wherein
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21 the attorney-client privilege in 2:11-cr-327-PMP-CWH is deemed waived for the
22 purposes of this proceeding as to all contentions raised in Defendant's Motion,
23 and all materials and information related thereto be ordered divulged to the
24
25 government.

5. The voluntary disclosure by Defendant of privileged attorney
1 communications and his complaints regarding Ms. Hernandez and Ms. Armeni
2 constitute waiver of the privilege as to all other such communications on the
3 same subject. *Weil v. Investment/Indicators, Research & Management*, 647
4 F.2d 18, 24 (9th Cir. 1981); *Clady v. County of Los Angeles*, 770 F.2d 1421, 1433
5 (9th Cir. 1985), cert. denied, 475 U.S. 1109 (1986).
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8 Even when a party does not explicitly disclose the content of an
9 attorney-client communication, he may waive the privilege
10 implicitly. A person cannot always claim that he relied on counsel,
11 while protecting what was said between them from disclosure.
12 As we have said, "The privilege which protects attorney-client
13 communications may not be used both as a sword and a shield.
14 Where a party raises a claim which in fairness requires disclosure
15 of the protected communication, the privilege may be implicitly
16 waived." (citations omitted).

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18 *United States v. Ortland*, 109 F.3d 539, 543 (9th Cir.), cert. denied, 522 U.S.
19 851, 118 S.Ct. 141 (1997).
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22 WHEREFORE, based on the foregoing, it is respectfully requested that
23 the attorney-client privilege in 2:11-cr-327-PMP-CWH be deemed waived as to
24 those matters Defendant has put at issue in his motion to vacate, set aside or
25 correct sentence. The government respectfully request that this Court order
26 Ms. Hernandez and Ms. Armeni to provide the government with affidavits or
declarations, as well as any relevant materials and information, addressing the

allegations and matters raised in Defendant's motion, within 30 days after the
1 date of the Court's order; and that the government be granted an additional 30
2 days, after receiving Ms. Hernandez and Ms. Armeni's affidavits or
3 declarations, to file its response to Defendant's 2255 motion.
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5 * * *

6 DATED this 24th day of January, 2014.
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8 DANIEL G. BOGDEN
9 United States Attorney

10 *s/ Elizabeth O. White*
11 ELIZABETH O. WHITE
12 Appellate Chief and
13 Assistant United States Attorney
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Certificate of Service

The undersigned certifies that the foregoing was served via first-class mail on the defendant, Gregory Wilson, and via cm-ecf filing on Krystallin D. Hernandez, Esq. and Paulo M. Armeni, Esq., on this the 24th day of January 2014:

Bo Arden Ellison
Reg # 46236-048
LaTuna FCI
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 3000
ANTHONY, TX 88021

s/ Elizabeth O. White
ELIZABETH O. WHITE
Appellate Chief and
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
Plaintiff,) 2:11-cr-327-PMP-CWH
v.)
BO ARDEN ELLISON,) ORDER
Defendant.)

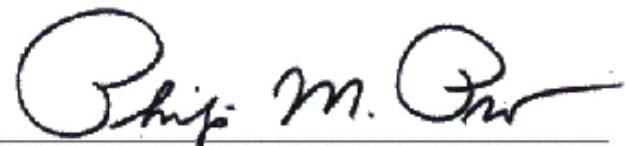
Based upon the pending application of the Government, and good cause appearing,

IT IS HEREBY ORDERED that the attorney-client privilege in
2:11-cr-327-PMP-CWH between the defendant and Krystallin D. Hernandez,
Esq. and Paulo M. Armeni, Esq., shall be deemed waived for all purposes
relating to Defendant's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside
or correct sentence by a person in federal custody. Former defense counsel
Krystallin D. Hernandez, Esq. and Paulo M. Armeni, Esq. shall, within 30 days
of this order, provide the government with affidavits or declarations concerning
all information known by them relating to those matters put at issue in
Defendant's motion. Further, Ms. Hernandez and Ms. Armeni may

communicate with government counsel and provide supporting documentation
1 regarding all matters put at issue in Defendant's motion.
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3 The government shall have an additional 30 days, after receiving Ms.
4 Hernandez's and Ms. Armeni's affidavits or declarations, to file its response to
5 Defendant's 2255 motion.
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7 DATED this 24th day of January, 2014.

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UNITED STATES DISTRICT JUDGE